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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 CHARLES HOGARTY, on behalf of) Case No. 08cv677-DMS (BLM)
11 himself, the general public,)
12 and all others similarly)
situated,)
13 Plaintiffs,) **ORDER GRANTING MOTION TO**
14 v.) **SCHEDULE EARLY NEUTRAL**
15 NEC CORP. OF AMERICA, et al.,) **EVALUATION**
16 Defendants.) [Doc. No. 13]
_____)

17 On June 18, 2008, parties to the above matter filed a motion
18 requesting that the Court set an Early Neutral Evaluation ("ENE").
19 Doc. No. 13. The parties' motion is **GRANTED**. An ENE will be held
20 on **July 17, 2008 at 1:30 p.m.** in the chambers of the Honorable
21 Barbara L. Major, United States Magistrate Judge, **located at 940**
22 **Front Street, Suite 5140, San Diego, California, 92101.**

23 The following are mandatory guidelines for the parties
24 preparing for the Early Neutral Evaluation Conference.

25 1. **Purpose of Conference:** The purpose of the ENE is to
26 permit an informal discussion between the attorneys, parties, and
27 the settlement judge of every aspect of the lawsuit in an effort to
28 achieve an early resolution of the case. All conference discussions

1 will be informal, off the record, privileged, and confidential.
2 Counsel for any non-English speaking party is responsible for
3 arranging for the appearance of an interpreter at the conference.

4 2. **Personal Appearance of Parties Required:** All parties,
5 adjusters for insured defendants, and other representatives of a
6 party having full and complete authority to enter into a binding
7 settlement, and the principal attorneys responsible for the
8 litigation, must be present **in person** and legally and factually
9 prepared to discuss settlement of the case. Counsel appearing
10 without their clients (whether or not counsel has been given
11 settlement authority) will be cause for immediate imposition of
12 sanctions and may also result in the immediate termination of the
13 conference.

14 Unless there are extraordinary circumstances, persons
15 required to attend the conference pursuant to this Order shall not
16 be excused from personal attendance. **Requests for excuse from**
17 **attendance for extraordinary circumstances shall be made in writing**
18 **at least three (3) court days prior to the conference.** Failure to
19 appear at the ENE conference will be grounds for sanctions.

20 3. **Full Settlement Authority Required:** In addition to
21 counsel who will try the case, a party or party representative with
22 full settlement authority¹ must be present for the conference. In
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24 ¹ "Full settlement authority" means that the individuals at the settlement
25 conference must be authorized to explore settlement options fully and to agree
26 at that time to any settlement terms acceptable to the parties. Heileman Brewing
27 Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to
28 have "unfettered discretion and authority" to change the settlement position of
a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003).
The purpose of requiring a person with unlimited settlement authority to attend
the conference contemplates that the person's view of the case may be altered
during the face to face conference. Id. at 486. A limited or a sum certain of
authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-
97 (8th Cir. 2001).

1 the case of a corporate entity, an authorized representative of the
2 corporation who is not retained outside counsel must be present and
3 must have discretionary authority to commit the company to pay an
4 amount up to the amount of the Plaintiff's prayer (excluding
5 punitive damages prayers). The purpose of this requirement is to
6 have representatives present who can settle the case during the
7 course of the conference without consulting a superior. Counsel for
8 a government entity may be excused from this requirement so long as
9 the government attorney who attends the ENE conference (1) has
10 primary responsibility for handling the case, and (2) may negotiate
11 settlement offers which the attorney is willing to recommend to the
12 government official having ultimate settlement authority.

13 4. **Confidential ENE Statements Required:** No later than
14 five (5) court days prior to the ENE, the parties shall submit
15 confidential statements no more than ten (10) pages² in length
16 directly to the chambers of the Honorable Barbara L. Major. **These**
17 **confidential statements shall not be filed or served on opposing**
18 **counsel.** Each party's confidential statement must include the
19 following:

20 a. A brief description of the case, the claims and/or
21 counterclaims asserted, and the applicable defenses or position
22 regarding the asserted claims;

23 b. A specific and current demand or offer for
24 settlement addressing all relief or remedies sought. If a specific
25 demand or offer for settlement cannot be made at the time the brief
26 is submitted, then the reasons therefore must be stated along with
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28 ² The parties shall not append attachments or exhibits to the ENE statement.

1 a statement as to when the party will be in a position to state a
2 demand or make an offer; and

3 c. A brief description of any previous settlement
4 negotiations, mediation sessions, or mediation efforts.

5 General statements that a party will "negotiate in good
6 faith" is not a specific demand or offer contemplated by this Order.
7 It is assumed that all parties will negotiate in good faith.

8 5. **New Parties Must be Notified by Plaintiff's Counsel:**
9 Plaintiff's counsel shall give notice of the ENE to parties
10 responding to the complaint after the date of this notice.

11 6. **Requests to Continue an ENE Conference:** Requests to
12 continue ENEs are rarely granted. However, the Court will consider
13 formal, written, *ex parte* requests to continue an ENE conference
14 when extraordinary circumstances exist that make a continuance
15 appropriate. In and of itself, having to travel a long distance to
16 appear in person is not "extraordinary." **Absent extraordinary**
17 **circumstances, requests for continuances will not be considered**
18 **unless submitted in writing no fewer than seven (7) days prior to**
19 **the scheduled conference.**

20 IT IS SO ORDERED.

21 DATED: June 24, 2008

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23

24 BARBARA L. MAJOR
United States Magistrate Judge

25 COPY TO:

26 HONORABLE DANA M. SABRAW
27 UNITED STATES DISTRICT JUDGE

28 ALL COUNSEL AND PARTIES